IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.427 OF 1999

Aiwan Sonaji Ranshur
Indian Inhabitant,
aged 35 years, residing
at Hanuman Nagar, Near
Wagle Estate Police Station
Thane. ...Appellant.

V/s

The State of Maharashtra ...Respondent.

Mrs. Anjali Patil for the appellant.

Mr. A.M. Shringarpure, APP for the State.

CORAM : V.G.PALSHIKAR & R.C.CHAVAN, JJ

DATED : 11th August, 2005

ORAL JUDGMENT : (Per R.C.Chavan, J)

1. Taking exception to his conviction under section 302 of the Penal Code and sentence of imprisonment for life imposed upon him by the learned Sessions Judge, Greater Mumbai, the appellant has preferred this appeal.

2. Facts leading to prosecution of the appellant are as under:-

3. On 17/1/1992, three persons were assaulting one

Prashant Prabhakar Tavade at Tulshepada Water Pipeline, Ambedkar Nagar, Bhandup (West), who sustained 14 injuries and fell at the spot. Pramila Rajendraprasad Singh, a social worker, saw the incident and informed Bhandup Police. The injured was taken to hospital but was pronounced dead.

4. Police registered an offence on the basis of the report given by Pramila in which she had described the unknown assailants. After performing inquest, body of Prashant was sent for post-mortem examination. Police performed panchanama of spot and recorded statements of witnesses. It transpired in course of investigation that the unknown assailants were the appellant, Santosh Vichare and Yeshwant Gabade. It seems that the police had been able to secure the presence of Santosh a juvenile offender and caused him to be sent to juvenile court. The appellant himself was absconding and was arrested on 29/4/1993. Police caused the test identification parade to be held by the Magistrate wherein eye witness identified the appellant to be one of the assailants. A charge-sheet was accordingly sent up against the appellant. During the pendency of this case before the Sessions Court, charge-sheet was sent up against the third absconder but it seems that he continued to elude the police. On commitment of the case by the Metropolitan

Magistrate, the learned Additional Sessions Judge charged the appellant of offence punishable under section 302 read with section 34 of the Penal Code. Accused pleaded not guilty and hence was put on trial.

5. In its attempt to bring home guilt of the accused, the prosecution examined in all six witnesses. The accused took defence of total denial. Upon consideration of prosecution evidence, in light of arguments advanced, the learned Additional Sessions Judge came to hold the accused guilty of offence punishable under section 302 of the Penal Code and sentenced him to suffer rigorous imprisonment for life. Aggrieved thereby, this appeal has been filed.

6. We have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor for the State. The learned Counsel for the appellant submitted that the learned trial judge was in error in relying on sole testimony of P.W. 2 - Bharati Khare, a minor, to convict the appellant. She submitted that the complainant P.W. 1 - Pramila had refused to identify the appellant as the person who assaulted the victim. In the light of this, evidence of P.W. 2 - Bharati ought to have been rejected by the learned Additional Sessions Judge. She also pointed out a few discrepancies in the evidence relating to the test

identification parade conducted by P.W. 3 - Special Executive Magistrate Shri Tavade. It is true that P.W. 1 - Pramila, the complainant, did not identify the accused. Ability of retaining image of a person in memory varies from person to person, therefore, if she did not retain the images of the assailants in her memory, it does not follow that other eye witnesses to the incident should like-wise forget the face of the appellant. Therefore, there is nothing incredible in Pramila's failure to identify the appellant and P.W. 2 - Bharati's saying that the appellant is the person who assaulted the victim.

7. The test identification parade was held by P.W. 3 - Special Executive Magistrate Shri Tavade in Police Station itself. True it is that courts have frowned upon the practice of holding the test identification parade in the Police Station but it does not follow that every test identification parade held in Police Station, is suspicious or that conviction based upon such test identification parade is vitiated.

8. In this case appellant was apprehended on 29/4/1993. The Investigating Officer had quite promptly caused the identification parade to be held on 3/5/1993. It may be seen that after arrest of the appellant, if a parade was not held immediately, there

would have been opportunity for the prosecution to tutor the witness in believing that the person apprehended by the police was the real assailant. Therefore there is no need to castigate the Investigating Officer for arranging the parade in the Police Station without awaiting for appellant's transfer to magisterial custody for parade to be held in jail premises. If it meets other requirements and passes the requisite tests of neutral impartiality, the parade would be relied upon.

9. The evidence of P.W. 3 - Special Executive Magistrate Shri Tavade would show that he was cross-examined at length on almost all aspects of the matter but his testimony remained unshaken. He has stated that he took precautions to ensure that the appellant was not shown to the eye witness. Appellant was also taken in a police vehicle to the place of parade, after covering his face. It is not shown that P.W. 2 - Bharati had an opportunity of seeing the appellant prior to the parade. Appellant was given chance to choose his place as well as exchange the clothes, if he so desired. Then one of the panchas was sent for fetching the witness to identify the assailant.

10. The learned Counsel for the appellant stated that

there were some discrepancies in the evidence of P.W. 2 - Bharati and P.W. 3 - Special Executive Magistrate Shri Tavade, which created a doubt about the manner in which the parade was held. She submitted that the dummies and panchas were not selected by the Special Executive Magistrate but were brought by the police. True it is that the dummies and panchas were brought by the police but it does not follow that the Special Executive Magistrate did not select the dummies. In fact P.W. 3 - Tavade states in para 11 of his deposition that dummies were selected in parade room and this selection was made before the accused was brought to the parade room. Shri Tavade has also stated that he had gone to the Van where the accused was sitting to see the accused prior to selecting dummies. Therefore, this objection in respect of dummies does not survive.

11. The learned Counsel for the appellant pointed out that there was a discrepancy in the account of the parade given by P.W. 2 - Bharati and P.W.3 - Special Executive Magistrate Shri Tavade. While P.W.2 - Bharati stated that the door of the room was open when she was taken in, P.W. 3 - Tavade had stated that he had closed the door. P.W. 3 - Tavade had, in fact, stated that one panch was sent to bring the witness. The panch knocked and then the door was opened. P.W.

2 - Bharati had stated that policeman took her to the test identification parade room and then added that the person who brought her stood outside the room, which implied that the policeman did not enter the room. While P.W. 2 - Bharati had stated that the door was open, she had also added that the door was not closed from inside. It is possible to infer that the planks of the door were shut but door was not closed or latched from inside, so that it could be opened from outside. While appreciating evidence and weighing probabilities on the basis of evidence which has been recorded, one must bear in mind the limitations on expression of individuals. Very few persons have the gift of picturesque speech.

12. We are of the opinion that these minor discrepancies which come from witnesses who depose about the incident after a gap of six years, are natural and, in fact, rule out the possibility of the testimonies being tutored or unnatural. Therefore testimonies of both P.W. 2 - Bharati and P.W.3 - Tavade sound to us as truthful as the learned trial judge had observed.

13. The learned Counsel for the appellant made a feeble attempt to suggest that the incident occurred in the evening and, therefore, there may not be

sufficient opportunity for the witness to see the assailant. According to the prosecution, the incident occurred around 5.00 p.m. on 17/1/1992 at Bombay on the West-coast of India. It does not require any evidence from almanac to prove the time of sun rise and sun set in order to show whether there was an ample light at 5.00 p.m. or 6.00 p.m. at the spot. Therefore, there is absolutely no force in the submissions tenaciously made by the learned Counsel for the appellant. We find that the learned Trial Judge has, on appreciation of evidence, rightly held the appellant guilty of murder and, therefore, see no reason to upset the findings recorded and the sentence inflicted by him.

14. In the result, appeal fails and is dismissed. Appellant was admitted to bail during pendency of the appeal. He shall surrender to his bail within one month before the Sessions Judge, Greater Bombay, who shall then take steps to commit the appellant to prison to serve out rest of the sentence.

(V.G. PALSHIKAR, J.)

(R.C. CHAVAN, J.)